

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SWEET GRASS - BASIN (43BV)

\*\*\*\*\*

CLAIMANTS: Jerry Iverson; Linda Iverson

**CASE 43BV-0317-R-2023**

43BV 8300-00

43BV 30131441

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Jerry Iverson and Linda Iverson are the record owners of claims 43BV 8300-00 and 43BV 30131441.
2. Claims 43BV 8300-00 and 43BV 30131441 were decreed with DNRC issue remarks. All issue remarks must be addressed.
3. Irrigation claim 43BV 8300-00 was decreed with the following DNRC issue remark:

4. The DNRC did not provide any information to substantiate the issue remark decreed on claim 43BV 8300-00.

5. Domestic claim 43BV 30131441 was decreed with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43BV DECREE ISSUED 12/19/1984.  
THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED PROPERTY RECORD CARD IS 1921.  
THE CLAIMED VOLUME EXCEEDS THE 6.5 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

6. The first-listed issue remark decreed on claim 43BV 30131441 is a notice-type issue remark that does not require action.

7. Claim 43BV 30131441 was claimed with a 1918 priority date and a land patent was included with the Statement of Claim; however, no evidence was provided showing the claim was used for domestic use as early as 1918. The Montana Cadastral Survey property card for the parcel indicates a house was present on the property as early as 1921. Based on the record, it appears the priority date for claim 43BV 30131441 should be changed to December 31, 1921, resolving the priority date issue remark.

8. Claim 43BV 30131441 was claimed with a 6.60 acre-feet volume. The volume guideline for this claim is 6.50 acre-feet.

9. A deadline was set for Claimants Jerry Iverson and Linda Iverson to file a statement agreeing or disagreeing that the priority date for claim 43BV 30131441 be changed to December 31, 1921 and for Claimants Jerry Iverson and Linda Iverson to file a statement agreeing or disagreeing that the volume for claim 43BV 30131441 be reduced to 6.50 acre-feet. The Order Setting Filing Deadline stated that if nothing were filed by the deadline, this Master would conclude the Claimants agree the priority date for claim 43BV 30131441 should be changed to December 31, 1921 and that the volume should be reduced to 6.50 acre feet. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

10. On March 21, 2023, Jerry Iverson filed a Statement indicating he agrees the priority date for claim 43BV 30131441 should be December 31, 1921 and the volume should be 6.50 acre feet.

11. Nothing was filed by Linda Iverson.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. Without further information, the issue remark decreed on claim 43BV 8300-00 does not overcome the prima facie status afforded the point of diversion for the claim.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The remark indicating claim 43BV 30131441 was not in the 1984 decree is a notice-type issue remark. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. The priority date for claim 43BV 30131441 should be changed to December 31, 1921.

2. The volume for claim 43BV 30131441 should be reduced to 6.50 acre feet.

3. The issue remarks should be removed from claims 43BV 8300-00 and 43BV 30131441.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Jerry Iverson  
Linda Iverson  
1270 Lower Sweet Grass Road  
Big Timber, MT 59011

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\43BV PD\Cases\43BV-R317\43BV-0317-R-2023 MR 5.2.23 rc.docx

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SWEET GRASS CREEK  
BASIN 43BV**

**Water Right Number:** 43BV 8300-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JERRY IVERSON  
1270 LOWER SWEET GRASS RD  
BIG TIMBER, MT 59011

LINDA IVERSON  
1270 LOWER SWEET GRASS RD  
BIG TIMBER, MT 59011

**Priority Date:** DECEMBER 31, 1914

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 52.70

**Source Name:** DRY FORK SWEET GRASS CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	22	2N	16E	SWEET GRASS

**Period of Diversion:** JUNE 1 TO AUGUST 31

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 1 TO AUGUST 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.70		NE	22	2N	16E	SWEET GRASS

**Total:** 52.70

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SWEET GRASS CREEK  
BASIN 43BV**

**Water Right Number:** 43BV 30131441 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JERRY IVERSON  
1270 LOWER SWEET GRASS RD  
BIG TIMBER, MT 59011

LINDA IVERSON  
1270 LOWER SWEET GRASS RD  
BIG TIMBER, MT 59011

**Priority Date:** DECEMBER 31, 1921

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 6.50 AC-FT

**Households:** 1

**Maximum Acres:** 2.00

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	22	2N	16E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		NENWSE	22	2N	16E	SWEET GRASS

**Total:** 2.00